BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

JIM CASEY Claimant	
VS.	Docket No. 205 769
VANGUARD PLASTICS, INC.) Docket No. 205,768
Respondent }	
HARTFORD ACCIDENT AND INDEMNITY Insurance Carrier	

<u>ORDER</u>

Claimant requests review of the Order by Administrative Law Judge Bruce E. Moore dated December 11, 1995 denying claimant's request for benefits.

ISSUES

The Administrative Law Judge found that claimant failed to give timely notice of accident as required by K.S.A. 44-520. That is the sole issue on this review.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, for purposes of preliminary hearing the Appeals Board finds:

- (1) Under K.S.A. 44-534a, the Appeals Board has the jurisdiction and authority to review preliminary hearing findings related to timely notice of accident.
- (2) The Administrative Law Judge's preliminary hearing Order should be affirmed.

Claimant alleges he sustained a June 21, 1995 work-related injury, and acknowledges he did not give notice of accident to the respondent within ten days of its occurrence. Claimant notified respondent of the alleged accident some time after July 1, 1995, but before or on July 7, 1995.

Claimant testified he did not initially tell the respondent about his work-related accident because he feared losing his job and health insurance benefits. Although in some instances a reasonable fear of discharge might constitute just cause in excusing an injured worker from providing notice within ten days of the date of accident, the evidence presented in this proceeding does not support that finding. The main thrust of claimant's argument is that he had sustained three minor work-related injuries in the six- month period he had worked for the respondent, and that his supervisor had threatened to fire him if he

could not do his job. Claimant testified he told the respondent he was injured at home rather than at work because he thought his job was in jeopardy.

The Administrative Law Judge did not accept that explanation as being reasonable or credible. When claimant initially sought medical treatment on June 21, 1995, the doctor placed him in physical therapy and restricted him to light duty. Claimant then began a three- or four-day period where he attended physical therapy in the morning and afterwards went to work restricted to light duty. Therefore, despite the fact that claimant's job was affected by his back condition, he still did not advise respondent that he had sustained a work-related injury within ten days of its occurrence. The Administrative Law Judge had the opportunity to observe the claimant testify and assess his demeanor and credibility. In this instance the Appeals Board gives some deference to the Judge's impressions. Based upon the entire record, the Appeals Board finds that claimant has failed to establish just cause to extend the period of providing timely notice of accident under K.S.A. 44-520.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Bruce E. Moore dated December 11, 1995 should be, and hereby is, affirmed.

II IS SO ORDERED.
Dated this day of February 1996.
DOADD MEMBED
BOARD MEMBER
BOARD MEMBER
BOARD MEMBER

c: P. Kelly Donley, Wichita, Kansas Robert A. Anderson, Ellinwood, Kansas Bruce E. Moore, Administrative Law Judge Philip S. Harness, Director